IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 800 of 1981

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDMIYA A SHAIKH

Versus

FOOD CORPN OF INDIA

Appearance:

1. First Appeal No. 800 of 1981

MR VC DESAI for Appellant Nos.1-2

MR DD VYAS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/08/2003

ORAL JUDGEMENT

This First Appeal has been filed by the original plaintiffs against the judgment and decree dated 30th of January, 1981 passed by the learned 2nd Jt.Civil Judge

(S.D.), Narol, Ahmedabad (Rural), in Special Civil Suit No.11 of 1979 whereby the suit filed by the plaintiffs was dismissed.

2. The facts in short are that the plaintiff No.1, who is serving with the defendant Corporation, and plaintiff No.2, who is his wife, were staying in the staff quarter No.5 situated in Kaligam, Sabarmati. It is the case of the plaintiffs that due to defective wiring, the daughter of the plaintiffs aged 15 years was electrocuted while she was putting the cloth on the iron wire tied at two walls for drying. Since the death was caused due to wrongful and negligent acts of the defendant, plaintiffs filed the suit to recover damages from the defendant.

2.1 The defendant filed its reply at Ex.4 denying that the accident took place due to negligence and indifference of the plaintiffs. It was contended that electric wiring and fitting were in perfect condition and the defendant was not at all liable for the fatal accident. It was further contended that whenever any complaint of electric wiring was given, the same were properly responded. It was also contended that the accident occurred as the plaintiffs tied one end of the metal wire with the lamp holder bracket fixed on the wall in the verandah of the staff quarter and the other end with the conduct pipe. This wire supported the corrugated sheet put on door of verandah as projection against rain water. A metal wire was tied with the conduit pipe and another wire was tied with a book on the opposite wall for drying clothes. It was stated that on the day prior to the accident, there was a heavy rain and it appears that the lamp holder bracket passed electric current on the wire tied with the lamp holder and the electric current also passed in the conduit wire and in turn to wire on which the clothes were hanged by the deceased. It was contended that the entire atmosphere was domp and heavy and deceased was also wet. Since all these facts jointly contributed to the accident, the defendant was not at all responsible and hence, it was prayed that the suit be dismissed with costs.

2.2 Upon hearing the learned advocates appearing for the respective parties, the learned Judge vide order dated 30th January, 1981 dismissed the suit of the plaintiffs which is giving rise to prefer the present First Appeal.

3. Heard Mr.V.C.Desai, learned counsel for the appellants and Mr.D.D.Vyas, for the respondent.

4. Learned counsel for the appellants has mainly argued that the trial court has committed a serious error in holding that the respondent was not negligent in maintaining electrical fittings in the suit quarter. He has taken me through the judgment more particularly pages 4 and 5 as well as evidence of appellant No.1, his neighbour Bhagvanbhai, defendant's witness No.2-Dineshbhai who was Electrical Engineer of the respondent Corporation, witness Chimanlal Kalidas Macwana and also letter dated 3-5-1977 written by the appellant to the respondent and argued that since the incident has taken place immediately on the next day of the alleged repairing, principle of res ipsa loquitur will apply in this case. It is further argued that trial court ought to have held that due to negligence on the part of the respondent and its officers, daughter of the appellant died which, in the ordinary course would not have happened if due care and caution had been taken by them and hence, the court below ought to have accepted evidence of appellant no.1 in toto. As far as the quantum is concerned, it is argued that as the deceased was earning Rs.90/- per month, the court ought to have held that the amount claimed by the plaintiffs is on the lower side and hence, the whole amount was required to have been awarded. It is, therefore, prayed that the entire amount as prayed in the suit be awarded and decree to that effect be passed.

5. Learned counsel for the respondent Corporation has mainly argued that the judgment and decree of the court below are just, legal and proper and do not require any interference in view of the fact that all the aspects including the oral evidence of the appellant, his neighbour and also of witness of respondent Corporation have been considered by it. Taking me through detailed discussion made by the court below on pages 4 and 5 of the judgment, it is contended that since the plaintiffs could not prove that the accident in question was a direct consequence of the respondent Corporation's negligent in maintaining the electrical fittings and installation of the suit quarter occupied by the appellants, it was rightly held by the trial court that the respondent was not liable to satisfy the suit amount. It is prayed that since no irregularity or illegality is forthcoming from the said judgment, this appeal is required to be dismissed.

6. Learned counsel for the respective parties have taken me through oral evidence of the appellant, his neighbour Bhagvanbhai, defendant's witness Dineshbhai,

who was the Electrical Engineer at the relevant time and the Wireman, Chimanlal Kalidas Macwana and letter Ex.45 written by the appellant No.1 to the respondent Corporation.

7. It is established from the above oral as well as documentary evidence and the judgment itself that the court has come to the conclusion that the appellants could not prove that letter dated 3-5-1977 was received by the authority. However, the court has failed to consider the oral evidence of witness of the Corporation, who himself is an engineer and who has categorically in his evidence that the appellant No.1 had made a complaint to him prior to the incident. It is deposed by him that he had visited the quarter of the plaintiff and had seen that the wiring done inside the switch board in the kitchen and the wall which is common between the verandah and kitchen was not good and hence, he instructed Wireman, Mr.Macwana to change the wiring internally and externally connecting those wires and also to replace the wires of the verandah going towards the bathroom through the conduit pipeline to the switch board. This is supported by the version of Mr.Macwana. It has been deposed by Mr.Macwana that he has changed wiring of about 25 metres and after repairing, he has obtained signature of the person residing in the quarter in which he has done repairing work and said entry has been proved and produced by him at Ex.24. Relying heavily on the said evidence, court below has come to the conclusion that if any fault remains after repairing, then it was the duty of the plaintiff to point out to the wireman of the defendant Corporation and ought not have signed on the register but ought to have written in the register that repairing work is not done satisfactory or completely as per his complaint. Having not done so, Court below has inferred that the Wireman of the defendant must have done the repairing as per the complaint given by the plaintiff. He has also dealt with the question as to how far the defendant is liable if any defect still remained after repairing. The defendant has employed Electrical Engineer to look after the wiring and other work in the quarter who in turn has employed two Wiremen for said work including Mr.Macwana, a qualified person. Court below has held that it was for the plaintiff to have brought to the notice of the defendant of any defect in the work and should have seen that Wireman had completely repaired the wiring and if he had not repaired as per the complaint, he could have complained to the Officer concerned. The court went upto the extent of holding that if plaintiff had apprehended that inspite of carrying out repairs, the electric current would still

leak in the said wall, then as a prudent and reasonable occupier of the quarter, he should have stopped electric current in the quarter at the time of rain and should not have taken risk of electrocution.

8. It appears that the trial court has not correctly appreciated the evidence in arriving at a conclusion. It has ignored the material facts. It is admitted by Dineshbhai, an Electrical Engineer of the Corporation, in his evidence that consequent upon receipt of complaint from the plaintiff prior to the incident, he visited the quarter in question with Wireman, Mr.Macwana and gave instructions to him to replace certain portion of the wiring on finding that there is leakage of electric current. It is seen from his evidence that thereafter he has not taken care to see whether Mr.Macwana has done the repairing work properly or not. It is also in his evidence that incident has taken place on the next day of alleged repairing. Once it has come to the conclusion that the alleged incident has taken place on the next day of the alleged repairing, then it is certain that principle of res ipsa loquitur would apply and the trial court ought to have held that there is negligence on the part of respondent in carrying out the repairs. It clearly appears that surroundings were under the control of the respondent. Had the respondent and its officers been taken reasonable care, the fatal incident would not have occurred at all and therefore also, adverse inference should have been drawn against the respondent. Therefore, the reasons assigned by the court in arriving at a conclusion for dismissing the suit of the plaintiffs are unjust, improper and untenable in law.

9. Considering all the aspects of the case as described hereinabove, I am of the opinion that the principle of res ipsa loquitur applies in this case and, therefore, I am of the view that the incident in question had occurred due to negligence on the part of the respondent wherein daughter of the appellants has lost her life. Having decided as aforesaid, the question now comes regarding the entitlement of claim amount. According to plaintiff No.1, his daughter was doing household work at the place of one Allahmiya and was earning Rs.90/- per month. Said Allahmiya was also examined by the plaintiff and supported this say. Even court below has come to the conclusion while deciding issue No.4 that amount of Rs.15,300/-is quite reasonable and acceptable. In these circumstances, amount claimed by the plaintiffs appears to be just and proper and decree to that effect is required to be passed.

10. In view of the above, this appeal is allowed. Judgment and decree dated 30th of January, 1981 passed by the learned 2nd Jt.Civil Judge (S.D.), Narol, Ahmedabad (Rural), in Special Civil Suit No.11 of 1979 dismissing the suit is set aside and decree for Rs.15,300/- as prayed for is passed in favour of the appellants with the running interest @ 9% per annum with costs. Decree be drawn accordingly.

(R.P.DHOLAKIA,J.)
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